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 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 DAVID MCKEW, ) No. C 07-3620 EDL  
 13 Plaintiff, )  
 14 v. )  
 15 SAN FRANCISCO MUNICIPAL )  
 RAILWAY; UNITED STATES POSTAL )  
 SERVICE; MELVIN WASHINGTON. )  
 17 Defendants. )  
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**ADMINISTRATIVE MOTION TO  
 CONSIDER WHETHER CASES  
 SHOULD BE RELATED;  
 DECLARATION OF JONATHAN U.  
 LEE**

Civil Local Rules 3-12(b), 7-11

18 DAVID MCKEW, ) No. C 08-00855 JL  
 19 Plaintiff, )  
 20 v. )  
 21 SAN FRANCISCO MUNICIPAL )  
 RAILWAY; UNITED STATES POSTAL )  
 SERVICE. )  
 23 Defendants. )  
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*(This Motion is made in Action 07-03620  
 EDL in compliance with the Civil Local  
 Rules and filed in Action 08-00855 JL as a  
 Special Appearance)*

1 TO THE PARTIES AND TO THE COURT IN ACTION 07-03620 EDL AND BY SPECIAL  
2 APPEARANCE IN ACTION 08-00855 JL:

3 **INTRODUCTION**

4 In the interests of judicial economy, the United States Attorney's Office brings this motion to  
5 relate the pending action (Action 08-00855 JL), to a previous action brought by the plaintiff  
6 (Action 07-03620 EDL).

7 In the earlier action, which involved the same legal claims and defenses based on similar  
8 factual occurrence, the Court granted the Federal Defendant's Motion to Dismiss for lack of  
9 subject matter jurisdiction. Plaintiff has now cured the jurisdictional defect and refiled this  
10 action in San Francisco Superior Court, from which the Federal Defendant removed the action on  
11 February 8, 2008.

12 **STATEMENT OF FACTS**

13 **I. Procedural History of the First Action (Action 07-03620 EDL)**

14 On May 30, 2007, plaintiff McKew filed his complaint in San Francisco Superior Court  
15 against the San Francisco Municipal Railway, Melvin Washington and the United States Postal  
16 Service, alleging personal injuries from motor vehicle negligence on September 2, 2006.

17 The Postal Service removed the action to this Court on July 13, 2007. [Docket #1]

18 The Postal Service moved to dismiss the action on July 27, 2007. [Docket ## 4-6]

19 By stipulations dated October 22, 2007 and November 27, 2007, the Court dismissed the  
20 complaint against the United States without prejudice and remanded the action to San Francisco  
21 Superior Court. [Docket ## 14, 16-18]

22 **II. Procedural History of This Action (Action 08-00855 JL)**

23 On December 20, 2007, plaintiff McKew filed his complaint in San Francisco Superior Court  
24 against the San Francisco Municipal Railway and the United States Postal Service, alleging  
25 personal injuries from motor vehicle negligence on September 2, 2006.

26 The Postal Service removed the action to this Court on February 8, 2008. [Docket #1]

## ARGUMENT

The instant action, 08-00855 JL, should be related to the prior action.

First, the two cases are identical in every material respect, involving common legal theories and facts. Both allege plaintiff suffered personal injuries in a motor vehicle incident on September 2, 2006.

Second, it appears likely that there will be an unduly burdensome duplication of judicial effort if the cases are not related.

To foster consistency of the outcome and promote judicial economy, as well as that of the parties, the Court should grant this motion and relate these two cases.

Consistent with Rule 3-12(b), this motion will be filed in the earliest-filed case brought by plaintiff Mohamed, with a copy provided to the Court in the later action as a Special Appearance.

Respectfully submitted,  
JOSEPH P. RUSSONIELLO  
United States Attorney

Dated: February 13, 2008

/s/  
JONATHAN U. LEE  
Assistant United States Attorney

## DECLARATION OF JONATHAN U. LEE

I, JONATHAN U. LEE, declare:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Northern District of California, am licensed to practice law in California and to appear before this Court, and am counsel for the United States, making this declaration from my own personal knowledge. If called as a witness, I could and would competently testify to the contents of this declaration.
  2. I am the Assistant U.S. Attorney assigned to defend the federal defendants in Action 07-03620 EDL and I brought the motion to dismiss the Court granted in 2007.
  3. I am familiar with the facts and issues alleged in Action 07-3620 EDL. There, plaintiff McKew alleged he was injured when he struck a parked Postal Service vehicle. At the time of the injury, Mr. McKew was a passenger on a San Francisco cable car, according to the complaint.
  4. In his new complaint, McKew v. Postal Service, Action 08-00855 JL, Mr. McKew makes the same factual and legal allegations about the same incident.

I declare under penalty of perjury that the foregoing is true and accurate and that I have executed this declaration on February 13, 2008 in San Francisco, California.

/s/  
JONATHAN U. LEE  
Assistant United States Attorney